

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MARCUS WALKER #374618,

Plaintiff,

NO. 2:21-cv-12874

v

HON. DENISE PAGE HOOD

DR. MARY GREINER, *et al.*,

MAG. PATRICIA T. MORRIS

Defendants.

Marcus Walker #374618
In Pro Per
Gus Harrison Correctional Facility
2727 East Beecher Street
Adrian, MI 49221

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**MDOC DEFENDANT VELARDE'S
MOTION TO STAY DISCOVERY**

MDOC Defendant RN Mary Velarde, by counsel, under Fed. R.
Civ. P. 26(b)(2)(c), now moves the Court to enter an Order staying
discovery based upon the following grounds:

1. On January 25, 2023, RN Mary Velarde filed a Motion for Summary Judgment based on Plaintiff's failure to properly exhaust his administrative remedies. [ECF No. 44]. This Motion remains pending.

2. On February 22, 2023, Plaintiff filed his response to Defendant's Motion. In his response, Plaintiff did not indicate that discovery was necessary to respond to the motion. [ECF No. 49].

3. The issue of exhaustion is preliminary, and must be decided before a lawsuit under the PLRA is allowed to proceed. *Porter v. Nussle*, 534 U.S. 516, 524 (2002); *Booth v. Churner*, 532 U.S. 731, 739 (2001); *Jones v. Bock*, 549 U.S. 555 (2007).

4. Plaintiff has now served interrogatories and document requests to Defendant Velarde. (Defendant's Exhibit A).

5. Defendant Velarde moves this Court to enter an order staying discovery until the Court renders a decision on Defendant's pending Motion for Summary Judgment.

6. Concurrence in this Motion has not been sought because Plaintiff is an incarcerated prisoner proceeding in *pro se*.

Respectfully submitted,

/s/ Allan J. Soros

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Dated: March 10, 2023

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**MDOC DEFENDANT VELARDE'S BRIEF IN SUPPORT
OF MOTION TO STAY DISCOVERY**

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Dated: March 10, 2023

CONCISE STATEMENT OF ISSUES PRESENTED

1. Defendant has filed a Motion for Summary Judgment which is dispositive of Plaintiff's Complaint based on a failure to properly exhaust his administrative remedies prior to filing suit. Plaintiff has responded to that Motion and did not indicate a need for discovery. Plaintiff has now served discovery requests to Defendant Velarde. Should the Court stay discovery until resolution of Defendant's motion?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

This Court has wide discretion to stay discovery pending a decision on a motion to dismiss or for summary judgment. *Pacific Lumber Co. v. Nat'l Union Fire Ins. Co.*, 220 F.R.D. 349, 351 (D. Cal. 2003); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550 (11th Cir. 1985); *see also*, *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976); *Hachette Distrib., Inc. v. Hudson County News Co.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1991); *Transunion Corp. v. Pepsi Co*, 811 F.2d 127, 130 (2d Cir. 1987). A stay of discovery is appropriate when a motion appears to be substantial or appears to be well-founded in law. *Johnson v. New York Univ. Sch. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002).

STATEMENT OF FACTS

Plaintiff, Marcus Walker (“Walker”), is a pro se prisoner who is currently confined in the Michigan Department of Corrections (“MDOC”) at the Gus Harrison Correctional Facility (ARF), Adrian, Michigan. Walker’s Complaint is filed under 42 U.S.C. § 1983 and protests infringement of his civil rights, alleging violations of the Eighth Amendment of the United States Constitution.

“On February 1, 2018, Plaintiff injured his right shoulder and arm while working out in the prison’s weight room. In September 2018, an MRI performed at a Henry Ford Health System facility showed that he had a near complete tear of his rotator cuff.” (ECF No. 4, PageID.68-69.) “Plaintiff alleges the delay in treatment and failure to adequately treat his injury has resulted in permanent disability and that he continues to suffer from severe, debilitating pain which severely impacts and restricts his function.” (ECF No. 4, PageID.69.)

ARGUMENT

- I. **Defendant Velarde has filed a Motion for Summary Judgment which is dispositive of Plaintiff’s Complaint based on a failure to properly exhaust his administrative remedies prior to filing suit. Plaintiff has responded to that Motion and did not indicate a need for discovery. Plaintiff has now served discovery requests to Defendant Velarde. The Court should stay discovery until resolution of Defendant’s motion.**

On January 25, 2023, RN Mary Velarde filed a Motion for Summary Judgment based on Plaintiff's failure to properly exhaust his administrative remedies. [ECF No. 44]. This Motion remains pending.

Exhaustion of administrative remedies is a prerequisite to suit under the PLRA. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). The issue of exhaustion is preliminary, and must be decided before a lawsuit under the PLRA is allowed to proceed. *Booth v. Churner*, 532 U.S. 731, 739 (2001); *Porter*, 534 U.S. at 524; *Jones v. Bock*, 549 U.S. 555 (2007).

Federal Rule of Civil Procedure 26(c) allows the court to stay discovery based on good cause. In addition, the court may also control the timing and sequence of discovery based on Rule 26(d). This Court has wide discretion to stay discovery pending a decision on a motion to dismiss or for summary judgment. *Pacific Lumber Co. v. Nat'l Union Fire Ins. Co.*, 220 F.R.D. 349, 351 (D. Cal. 2003); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550 (11th Cir. 1985); *see also*, *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976); *Hachette Distrib., Inc. v. Hudson County News Co.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1991); *Transunion Corp. v. PepsiCo*, 811 F.2d 127, 130 (2d Cir. 1987).

A stay of discovery is appropriate when a motion appears to be substantial or appears to be well-founded in law. *Johnson v. New York*

Univ. Sch. of Educ., 205 F.R.D. 433, 434 (S.D.N.Y. 2002). “A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” *Chavous v. D.C. Fin Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001) (quoting *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987)). “[I]t is well settled that discovery is generally considered inappropriate while a motion that would be thoroughly dispositive of the claims in the Complaint is pending.” *Chavous*, 201 F.R.D. at 2 (quoting *Anderson v. United States Attorney’s Office*, No. CIV A.91-2262, 1992 WL 159186, at *1 (D.D.C. June 19, 1992)).

On February 22, 2023, Plaintiff filed his response to Defendant’s Motion. In his response, Plaintiff did not indicate that discovery was necessary to respond to the motion. [ECF No. 49]. Plaintiff has now served interrogatories and document requests to Defendant Velarde. (Defendant’s Exhibit A).

Defendant Velarde has filed a potentially dispositive motion. The Court should exercise its discretion and stay further discovery at this time.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Defendant Velarde moves this Court to enter an Order staying discovery until the Court renders a decision on Defendant Velarde's Motion for Summary Judgment.

Respectfully submitted,

s/ Allan J. Soros

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Dated: March 10, 2023

CERTIFICATE OF SERVICE

I certify that on **March 10, 2023**, I electronically filed **MDOC DEFENDANT VELARDE'S MOTION TO STAY DISCOVERY, proposed ORDER, BRIEF IN SUPPORT, INDEX OF EXHIBITS, and EXHIBIT A**, with the Clerk of the Court using the ECF system and I certify that my secretary, Joleen McQuiston, has mailed by U.S. Postal Service the papers to the following non-ECF participant(s):

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s/ Allan J. Soros (P43702)

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